



Oregon

John A. Kitzhaber, MD, Governor

Department of Environmental Quality

Northwest Region Portland Office

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February 20, 2014

Mr. Sean Sheldrake
U.S. Environmental Protection Agency
1200 Sixth Avenue
Suite, 900, M/S ECL-110
Seattle, Washington 98101

Re: Dispute of EPA Comments, Arkema Inc. Portland Facility
Oregon Pesticide Rule and Waste Designation

Dear Mr. Sheldake:

Thank you for the opportunity to clarify DEQ's November 20, 2008 letter regarding the State application of the Hazardous Waste Management Requirements (HWIR) Rule, the State of Oregon Pesticide Residue Rule, and the need to manage the dredged material as State of Oregon only hazardous waste. In a January 24, 2014 letter, Legacy Site Services LLC (LSS), agent for Arkema Inc., invoked dispute resolution for seven issues referenced in the U.S. Environmental Protection Agency (EPA) January 10, 2014 letter related to the Administrative Order on Consent for Removal Action entered into by Arkema Inc. and EPA. One of the disputed issues relates to EPA's interpretation of the November 20, 2008 letter (copy attached). Following the LSS notice of dispute, EPA requested that DEQ provide a position on the dispute related to DEQ's November 2008 letter.

As noted on our November 20, 2008 letter, DEQ adopted the HWIR rule in 2003. The rule excludes dredged sediments from the definition of hazardous waste, under certain circumstances, and it also explains the circumstances where the exemption does not apply to dredged sediments and the dredged sediments must be managed as hazardous waste. The DEQ Nov. 20, 2008 letter states that the HWIR exclusion applies to both federal and State of Oregon only pesticide residue hazardous waste. The letter does not address any other situation. If dredged sediment containing a State of Oregon only pesticide residue hazardous waste is managed upland outside of the jurisdiction of a Clean Water Act Section 404 permit or a Marine Protection, Research and Sanctuaries Act section 103 permit, it must be managed consistent with DEQ requirements for a State of Oregon only hazardous waste. Should you require any additional clarification, please do not hesitate to contact me at (503) 229-5072 or Obrien.Audrey@deq.state.or.us.

Sincerely,

Audrey O'Brien, Manager
Environmental Partnerships Section
DEQ Northwest Region

Cc: Keith Johnson, DEQ NWR, Johnson.Keith@deq.state.or.us
Matt McClincy, DEQ NWR, McClincy.Matt@deq.state.or.us



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Theodore Kulongoski, Governor

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November 20, 2008

Sean Sheldrake
U.S. Environmental Protection Agency
1200 Sixth Avenue, ECL-111
Seattle, Washington 98101

Re: Clarification of Oregon State Listed Hazardous Waste - Pesticide Residue
Rule

Dear Mr. Sheldrake:

Since our discussions concerning whether DDT-containing sediment adjacent to the Arkema Portland facility is subject to management as a State –Only hazardous waste, the Department of Environmental Quality (DEQ) Hazardous Waste Program has provided the following clarification.

Application of HWIR

DEQ adopted the federal Hazardous Remediation Waste Management Requirements (HWIR-media rule) in October 2003. The rule excludes dredged sediments from the definition of hazardous waste, under certain circumstances. DEQ will also apply this exclusion to State-only hazardous wastes. Under this rule, dredged material should generally be managed in one of the following two ways:

- 1) If the dredged material is subject to a permit that has been issued under Clean Water Act (CWA) section 404 or the Marine Protection, Research and Sanctuaries Act (MPRSA) section 103, Resource Conservation and Recovery Act (RCRA) Subtitle C requirements do not apply. The dredged material is not hazardous waste.
- 2) If the dredged material disposal is not subject to a CWA section 404 or MPRSA section 103 permit, RCRA Subtitle C requirements may apply. For example, if dredged material were to be disposed in an upland facility with no runoff or return flow to waters of the United States, this material would not be under the jurisdiction of the CWA or MPRSA and therefore would be subject to RCRA Subtitle C if it meets the definition of a RCRA hazardous waste.

If you have any questions, please contact me at (503) 229-5538.

Sincerely,

Matt McClincy
Project Manager
Portland Harbor Section

cc: Jim Anderson, DEQ NWR
Mike Kortenhof, DEQ NWR
Todd Slater, LSS
Steve Parkinson, Groff Murphy